UNITED NATIONS **E**

Economic and Social Council

Distr.
GENERAL

E/CN.17/1994/16
5 May 1994

ORIGINAL: ENGLISH

COMMISSION ON SUSTAINABLE DEVELOPMENT
Second session
16-27 May 1994
Item 3 of the provisional agenda*

GENERAL DISCUSSION ON PROGRESS IN THE IMPLEMENTATION OF AGENDA 21, FOCUSING ON THE CROSS-SECTORAL COMPONENTS OF AGENDA 21 AND THE CRITICAL ELEMENTS OF SUSTAINABILITY

Letter dated 2 May 1994 from the Permanent Representative of Austria to the United Nations addressed to the Secretary-General

It gives me great pleasure to transmit to you a copy of the report on the International Symposium "Sustainable Development and International Law", which was held in Austria from 14 to 16 April 1994 at the invitation of the Austrian Ministry for Foreign Affairs (see annex).

The Symposium constituted one of Austria's contributions to the preparatory process for the second session of the Commission on Sustainable Development and its conclusions should provide an input to the ongoing development of Agenda 21.

May I ask for your kind assistance in circulating this report as a document of the second session of the Commission on Sustainable Development, under agenda item 3.

(Signed) Ernst SUCHARIPA
Ambassador
Permanent Representative of Austria
to the United Nations

---

* E/CN.17/1994/1.

Annex

INTERNATIONAL SYMPOSIUM

"Sustainable Development and International Law"

Baden bei Wien, 14 - 16 April 1994

CONTENTS

	Page
General Observations	3
Opening Statements	3
Panel: Sustainable Development - Objectives and Consequences	5
Panel: Priorities for the Development of International Law	5
Panel: Implementation of and Compliance with International Environmental Commitments	7
Panel: Participation of All Stakeholders in the Development and Implementation of International Law of Sustainable Development	11
Panel: Environmental Policies - Their Compatibility with International Trade and Other Agreements	13
Conclusions Drawn by the General Rapporteur	15
APPENDIX I: Agenda/Programme of Work	19
APPENDIX II: List of Participants	24

INTERNATIONAL SYMPOSIUM
"Sustainable Development and International Law"
Baden bei Wien, 14 - 16 April 1994

Report

General Observations:

1. From 14 to 16 April 1994 an international symposium on "Sustainable Development and International Law" was held in Baden bei Wien at the invitation of the Austrian Ministry for Foreign Affairs.

The work load was allocated to panels which were chaired by Mr. Hugo HAIDER, Deputy Director General in the Federal Ministry for Environment, Youth and Family; Ambassador Franz CEDE, Legal Counsel in the Federal Ministry for Foreign Affairs; Professor Gerhard HAFNER, University of Vienna; Professor Christoph SCHREUER, University of Salzburg; and Mr. Thomas Michael BAIER, Federal Ministry for Foreign Affairs. The General Rapporteur was Ambassador Professor Winfried LANG, Permanent Representative of Austria in Geneva.

Attached to this report is the agenda of the symposium as well as a list of participants.

2. The Symposium constituted the contribution of Austria to the preparatory process for the second session of the UN Commission on Sustainable Development (CSD). Papers presented by speakers and contributions of discussants will be published by Graham & Trotman.

3. The following items were discussed at the Symposium:
- Sustainable Development - Objectives and Consequences,
- Priorities for the Development of International Law,
- Implementation of and Compliance with International Environmental Commitments,
- Participation of All Stakeholders in the Development and Implementation of International Law for Sustainable Development,
- Environmental Policies - Their Compatibility with International Trade and Other Agreements.

Opening Statements:

4. In introducing the main subjects of the Symposium, the General Rapporteur, Ambassador LANG, reminded participants that the objective and purpose of this meeting was not to agree on some negotiated text but to generate fresh and new insights as well as action-oriented proposals which could be injected into the deliberations of the Commission on Sustainable Development.

5. The Federal Minister for Environment, Youth and Family Ms. RAUCH-KALLAT welcomed participants and reiterated Austria's strong interest in the elaboration and implementation of international environmental law. She recalled Austria's commitment to making sustainable development a worldwide as well as regional and national reality. She also addressed the recent conclusion of the restructuring process of The Global Environmental Facility (GEF). Referring to Austria's historical and geopolitical position she mentioned numerous regional developments in the context of the ECE, the Alpine Convention, and the Conference of European Environment Ministers (Lucerne 1993). After highlighting the importance of the trade and environment issue, she drew attention to the Austrian proposal to establish a permanent legal body, dealing with existing and future environmental instruments. She expressed concern for the issue of prompt and efficient implementation; new ways have to be found to secure compliance at national and international levels (mechanisms for dispute avoidance, etc.).

6. A message from Federal Minister for Foreign Affairs MOCK was read by Ambassador WOLTE, Deputy Secretary General for Foreign Affairs. He said that since the Stockholm Conference of 1972 it has become clear that protection of the environment can only be enhanced in connection with progress in social and economic development. Austria organized this Symposium with the confidence that the Commission on Sustainable Development would serve as a major forum to identify, evaluate, and enhance the future role of international law of sustainable development. Austria has particularly been concerned about the increase of international conflicts due to environmental degradation and their implied dangers (see the Austrian "Green Helmets", an initiative on environmental disputes). A permanent body established within the UN system to deal with the development of environmental law should continue to encourage discussions on a mechanism for environmental dispute avoidance and could act as a liasion between international environmental instruments, especially in respect of common institutional and procedural questions.

7. UNEP Executive Director DOWDESWELL underlined in her keynote statement that the changing world situation allows for wider international cooperation and opens new approaches for international environmental law; however, international environmental law must move in the direction of sustainable development. She stressed that the latest international instruments constitute signs of such a movement. She then focused on certain characteristics of international environmental law (context of uncertainty, common but differentiated responsibilities, problems of implementation) and identified challenges to be met by the Symposium. First, it should identify the advantages and disadvantages of nonlegally binding instruments ("soft-law"); second, causes of noncompliance and means to remedy them should be looked into and third, possible synergies between treaties in similar fields, and in different geographic settings, should be explored.

Panel: Sustainable Development-Objectives and Consequences

8. On behalf of the CSD its vice-chair, Mr. JOMAA, expressed the hope that the symposium would produce concrete recommendations and action-oriented proposals. Ms. WILLIAMS-SILVEIRA, speaking for USG Desai highlighted the revolutionary nature of the Rio-documents and some of the principles contained in them. She recalled problems of implementing international law at the domestic level, in particular the issue of institutional capacities, and suggested the development of indicators to check complex compliance problems. According to her view CSD would act as a sounding board and a catalyst for the development of international law.

9. During the discussion most interventions reflected the concern for more attention to be paid to "soft-law" as an evolutionary tool of lawmaking; in this context the importance of the "framework convention/protocol approach" was also stressed. The role of nongovernmental international bodies in the field of standard-setting was also mentioned, as was the importance of customary law. Problems of noncompliance were traced back to insufficiencies in the lawmaking process, such as the lack of a legitimate forum.

Panel: Priorities for the Development of International Law.

10. Professor BROWN-WEISS introduced the concept of "global environmental justice," which reflects a move from the "old model" of international relations in the environmental field toward a "new model". The old model was characterized by a concentration on state actors, unfair resource allocation, a "first come first serve" practice, as well as liability and responsibility. A close relationship between natural resources allocation and pollution control also existed. Ms. Brown-Weiss stated that the new model should be based on the application of equity, especially intergenerational equity, and the use of a new ethic. Environmental issues should not be solved on the back of the poor communities, neither at the national level nor at the international level. She reported that this new model implies the integration of new, even nonstate, actors in the decision-making process. As a consequence the negotiation and implementation of international environmental agreements would be made more efficient. She also raised the question of the most appropriate approach. Environmental lawmaking could be centralized in one institution, comparable to the structure of the World Intellectual Property Organization (WIPO); this would lead to a "Code of the Environment". The other possible way would be to maintain the present decentralized approach, while improving the coordination.

11. Professor GINTHER clearly underlined the relationship between the introduction of this new model, building upon equity and ethical considerations, and the use of participatory democracy and the great importance of good governance. The evolution of the concept of equity as seen in both the civil and common law systems should also be reviewed.

12. In the discussion many speakers raised questions on the effective application of the concept of equity. While there was agreement on the necessity for improving the efficiency of international lawmaking, there was no agreement on whether the WIPO model of bringing together several treaties under one roof would be an improvement.

13. Professor HANDL, addressing the issue of General Rules vs. Specific Obligations, expressed the view that sustainable development is not a fixed but an evolving concept. The concepts, rules, and principles adopted and agreed upon in the UNCED process represent a certain balance between environmental and development concerns. It might be useful to reconsider this balance during a "midterm review" in the light of changing circumstances. He stressed that the definition of sustainable development could invite an overly anthropocentric and instrumentalist interpretation, which could undermine the very pursuit of sustainability in the long run. Analyzing the role of international financial institutions he drew attention to the utility of indicators for sustainable development. Furthermore, he recognized a close connection between the topic of sustainable development and national resource accounting.

14. The discussants viewed the above issues mainly in the light of their experiences from specific instruments that they had been involved in. Mr. ZAMMIT-CUTAJAR underlined that the crafting of an efficient instrument involves a careful balance between generality and specificity. In that endeavor one must take into account not only environmental signals, but also social and economic indicators. Mr. DIALLO argued that desertification or rather soil degradation is a classical issue of sustainable development as its ramifications cover a multitude of different sectoral issues. For example, the negotiation of the Convention on Desertification was a translation of the text of Agenda 21 into legal obligations. It was structurally interesting, because many of its specific obligations were to be included in regional implementation instruments.

15. In the ensuing discussion many speakers raised the question of" treaty congestion" and reiterated the necessity to improve coordination between different instruments and sectoral agreements.

16. Mr. SANDS examined the relationship between sustainable development and the legal value of principles of international law. Sustainable development, although considered an evolving principle, has already been included in a number of international agreements such as the EEA, NAFTA, and WTO. Principles mentioned in the context of sustainable development originate in various areas of international law, such as human rights, economic law, and environmental law. After investigating the negotiating history of the conventions on Climate Change and Biodiversity he examined the direct applicability of principles to the operation of international agreements.

17. Dr. MANN in discussing the above paper argued that sustainable development is an infinite concept. He questioned whether such principles are directly applicable and contribute to the operation of the respective treaty. He preferred the development of concrete rules to the introduction of an element of uncertainty into the implementation of international environmental law. Such uncertainty could be traced back to the use of principles.

18. In the discussion many questions were raised about the practical consequences of the direct application of principles. In the case of such application concrete problems might arise for the further evolution of international law.

Panel: Implementation of and Compliance with International Trade and other Agreements

19. Dr. MITCHELL, presenting a paper he had prepared together with Professor Antonia CHAYES, said that research on international regulatory treaties in security, economic, social, and environmental affairs provide an empirical foundation for a framework based on five propositions:

- New sovereignty (which is no longer simply the freedom to act autonomously).
- Ineffectiveness of sanctions (as they are costly, difficult to maintain, and slow to take effect).
- Sources of compliance and noncompliance (most states enter into treaties to comply; noncompliance can be due to inadvertence and lack of resources and - although rare - intention).
- Transparency (which permits independent decisions among coordinated partners, reassuring them mutually on their similar actions and deterring those who contemplate noncompliance).
- Active treaty management (review and assessment, dispute settlement, capacity-building).

According to the speaker, experience shows a tendency away from "treaties with teeth" to a better management of compliance; this requires focusing on and improving of interactions and discussions that persuade actors to comply to rather than to resent "dramatic episodes of sanctions" as a response to clear violations.

20. Mr. KOSKENNIEMI, discussing the previous paper, stressed the difference between a realistic and a formalistic approach to dealing with the effectiveness of treaties. He preferred the latter. According to him three strategies could explain the effectiveness of treaties:

- International laws are backed by sanctioning mechanisms; practice, however, shows that sanctions are ineffective (of the 108 sanctions between the First World War and 1948 only 39 or about 36% had some success).

- Law does follow what the most powerful interests require: states enforce environmental law to the extent that it meets their interests; in practice, the emergence of environmental regulations often seems a matter of reaction to past catastrophes.
- "Soft responsibility", reliance on transparency and on reporting mechanisms; effectiveness has been connected with the textual indeterminacy of international agreements and the effects of environmental regulations.

21. Mr. Patrick SZELL pointed out that most agreements since 1972 have failed to come to grips with compliance supervision. Noncompliance regimes must avoid complexity, must be nonconfrontational and transparent. Experience of designing and operating noncompliance regimes under environmental treaties has remained limited. Decisions have often been left to the conferences of the parties. Many countries continue to be nervous about possible infringements of sovereignty (as demonstrated by the Montreal and sulfur regimes). The speaker underlined the inevitable correlation between the strictness of a treaty's compliance and enforcement regimes and the stringency of its substantive obligations. Compared with noncompliance procedures, dispute settlement mechanisms have rarely been used, but should serve as deterrents. Noncompliance regimes should generally be tailored to suit individual cases. In referring to the Montreal Protocol's implementation committee, the speaker stressed that it has already had a useful impact, but has still to embark on the difficult task of determining which individual parties have not met their substantive obligations under the convention. Every environmental instrument that incorporates a noncompliance regime would have to go through a lengthy period of confidence building.

22. Dr. MITCHELL in discussing Mr. Szell's contribution pointed out that an effective noncompliance regime must strive to make compliance more attractive and to minimize the resources needed for effective monitoring. It should also create a system of self-reporting and independent verification. To ensure that most cases of noncompliance are responded to, Dr. Mitchell stressed that it would help, if parties come into compliance where appropriate; where necessary more confrontational approaches should be encouraged. Compliance could be reached through three strategies:
- The standard model of legal enforcement, based on deterrence.
- The incentive-based system that increases the benefits of compliance.
- The coerced-compliance system that reduces the opportunities for noncompliance.

23. In the discussion many questions were raised as to treaty management and dispute avoidance. The view was expressed that dispute avoidance requires sufficient funding. The functioning of implementation committees as provided for in the Montreal Protocol

and the Second Sulfur Emmissions Protocol could be improved by giving these committees a more independent position. Several participants highlighted the differences between implementation, compliance, and effectiveness as well as between reporting and compliance procedures; transparency was found to be the key element in dealing with noncompliance. It was stated that compliance represents a dynamic component and has to be regarded as a long term process. Attention was also drawn to the concept of the differentiated responsibilities of industrialized and nonindustrialized countries. The view was expressed that compliance with international treaties also depends on an appropriate management at the level of domestic enforcement (in respect of legal tools, precedents in the field of human rights could be used).

24. Mr. ADEDE began with a reference to the "Green Helmets" concept proposed by Austria at the 6th Committee of the General Assembly in 1989 as an example of a dispute avoidance mechanism. Dispute avoidance was first fully examined at a meeting of experts convened at Bellagio, Italy, in 1974. At that meeting Australia had proposed in the course of UNCLOS III negotiations that parties, already at the stage of consultations, should be obliged to exchange statements of their position in writing; in the conciliation and judicial settlement procedures parties should be required to go through a phase of negotiations after the close of the written pleads. The Preparatory Committee of UNCED discussed (on the basis of a proposal presented by Austria and other states) the question of dispute prevention. This was also discussed at the UNEP meeting of Senior Legal Advisers at Nairobi in September 1992. According to the speaker a dispute avoidance mechanism should comprise the following elements: prior consultation, reporting procedure, fact finding, and the setting up of a commission of inquiry.

25. Mr. LOIBL in discussing the previous contribution pointed out that procedures for dispute settlement were to be found in nearly all environmental treaties which have been concluded in recent years. State practice has shown that disputes between states were mostly dealt with through negotiations and consultations between the parties involved, and that states have been very reluctant to initiate arbitration or ICJ proceedings. He considered the existence of dispute settlement mechanisms a tool preventing disputes, and thereby increasing the compliance and effectiveness of an international agreement. Any mechanism or instrument which avoids a dispute from arising was to be seen as dispute preventive. Comprehensive systems of dispute preventions have so far not been included in international environmental treaties, although a number of proposals have been made to that effect. The principle of dispute prevention has been referred to in some international instruments, such as the ECE convention on Environmental Impact Assessment in the Transboundary Context 1991 and the Nordic Convention 1974. The discussant also referred to

the Austrian "Green Helmets" proposal as a measure in the field of dispute prevention. Dispute prevention - like dispute settlement - dealing with the different environmental resources requires different mechanisms; a comprehensive list of possible mechanisms could be a valid basis for further development.

26. The discussion covered the relationship between international environmental law and international law on sustainable development. The view was widely shared that existing and emerging international law should be tested against the requirements of sustainable development. Furthermore the respective mandates of UNEP and CSD concerning international law were discussed as well as aspects of coordination and cooperation among international institutions.

27. Ms. PONCE-NAVA explained in her contribution that capacity-building implies the development of internal skill and expertise involving governments and their partners, such as NGOs, industry, and academic institutions. Environmental law, both international and national, constitutes just one of these components. By itself, the best legal regime could not do much to advance the pursuit of sustainable development goals. In conjunction with the requisite human and other resource capabilities for the development and application of appropriate policies, strategies, and activities, laws and regulations suited to country-specific conditions could be, according to Agenda 21, "among the most imporatant instruments for transforming environment and development policies into action." The speaker underlined the essential importance of the participation of all countries, including the developing countries, in treaty making on sustainable development. Special mechanisms would have to be created or continued to support national efforts to participate in the process of negotiation, revision, and implementation of international conventions.

28. Mr. BOYLE discussing the previous contribution underlined the importance of capacity-building for sustainable development, including appropriate funding and assistance in the field of technology. The discussant drew attention to a number of critical questions, particularly how well technology transfer and technical assistance provisions would work in practice and how far intergovernmental organizations could supply the necessary capacity or assist in its creation.

29. In the discussion many participants highlighted the importance of adequate approaches to capacity-building at the national level to prevent noncompliance. It was mentioned in several interventions that capacity-building should be based on adequate funding. Dispute prevention procedures should avoid the possibility of potential conflicts becoming political issues between governments. They should also facilitate the management of critical environmental situations.

Panel: Participation of all Stakeholders in the Development and Implemention of International Law of Sustainable Development.

30. Dr. TIMOSHENKO recalled that even before UNCED there was a long term process of integrating environment and development. As a follow-up to the Stockholm Conference of 1972, UNEP was established and has continously been engaged in this integration process. In the 1980s the notion of sustainable development emerged. UNCED gave a new mandate and political legitimacy to this concept and its inclusion in decision-making structures. Dr. Timoshenko said that there is a clear mandate for international lawmaking under this new umbrella. Among the institutional consequences of UNCED have been the creation of CSD and of the High Level Advisory Board as well as mandate for UNEP to strengthen cooperation and to develop further international environmental law. The coordination function of UNEP has implied practical measures such as the colocation of convention secretariats.

31. Professor BEKHECHI drew attention to the fact that environmental pollution calls for a new institutional order for regions, continents, and the world. Developing countries need not only financial help but also the knowlege and the experience of the developed countries; thus a new duty of cooperation under international law has emerged.

32. In his presentation on international financial institutions Dr. SAND drew attention to the rediscovery of trusts as institutional tools for sustainable development. His analysis of international mechanisms that have evolved as financial instruments of sustainable development at the global level included the following: the World Wide Fund for Nature (WWF), the World Heritage Fund of UNESCO, the series of "convention trust funds" established by UNEP, and the most recent set of funds developed mainly under World Bank auspices, the Global Environment Facility (GEF), the Ozone Projects Trust Fund, and the Rain Forest Trust Fund. Drawing on analogies from the concept of the charitable trust and its equivalents in national legal systems the speaker emphasized that the establishment of trust funds in the context of existing organizations avoids the need to create separate legal entities and bureaucracies.

33. Dicussing the role of financial institutions Mr. de BERDT ROMILLY highlighted the role of funds in the implementing agreements and innovative solutions such as debt for nature swaps. He considered GEF the main financial mechanism for sustainable development. In this context he suggested that an integrated and transparent approach should be followed.

34. In the ensuing discussion the fund approach received positive consideration. Mention was also made of funds used at the national and regional levels for compensating environmental damage.

35. In her paper on the role of corporate business Professor CHOUCRI stated that corporate business - although not an official actor under international law - is involved because of its power and its roles as a source of pollution and as an agent of technological change. The demands of sustainable development have also been experienced in the business community and have led to its increased responsiveness. Strategies followed by corporate business range from "business as usual" practices through "reactive" strategies such as environmental officers to "eco-active" strategies anticipating developments. Corporate business could contribute to sustainable development through the implementation of the concept of "best practice" through facilitating technological leapfrogging and through built-in training. Investments should be made in the context of the so-called technology triangle (collaboration of academic institutes, government, and business and industry).

36. Dr. YAMAMOTO in discussing the previous paper stressed the need to provide environmentally sound infrastructures for the growing population and gave examples of projects financed by the Global Infrastructure Fund (GIF).

37. In the discussion the important role of eco-auditing was highlighted as well as the efforts of the International Chamber of Commerce to operationalize the principle of "best practice". Reference was also made to the Business Council for Sustainable Development and its action related to the joint implementation of Agenda 21. Concerns were expressed on "leapfrogging backwards" by relocating industries to countries with less stringent environmental standards.

38. Dr. BURHENNE recalled the long history and the wide spectrum of NGOs. As a result of UNCED NGOs have been on their way to achieve a higher profile as sources of expertise and support. He stressed the need to agree on concrete rules and guidelines for the action of NGOs (ECE Task Force). Governments should be expected to grant NGOs the right to know (access to information) and the right to be heard (participation in decision making processes). NGOs would have to accept certain rules to ensure that a decision making process is fair, equitable, and transparent. Most of these basic rules were reflected in a Draft Convenant on Environment and Development elaborated by IUCN.

39. As discussant Mr. LYNCH indicated the various roles to be played by NGOs. He said that these ideas are means to the end of sustainable development especially in fostering a community-based management of natural resources. He further stated that NGOs are also supposed to provide data on the environment. He regretted that regional and local concerns have not sufficiently been taken into account by international law.

40. The issue of NGOs led to a controversial debate on their nature, their qualification, and their legitimacy as well as their role in international lawmaking. Some participants questioned the discipline of NGOs and raised doubts on their helpfulness in certain situations. Other participants referred to NGOs as providers of information, challengers of positions, supporters as well as advisers. In addition their role in the implementation of international law was mentioned.

Panel: Environmental Policies - Their Compatibility with International Trade and Other Agreements

41. Mr. REINSTEIN reviewed the different legal framework conditions as well as political cultures of the environmental and trade communities in pursuing their interests. Thereby he stressed the need of each side to go beyond its immediate concerns. Referring to the choice between unilateral measures and multilateral environmental agreements (MEAs), he pointed out that environmental protection could be achieved quite successfully through the negotiation of MEAs. The price of imposing unilateral measures may be very high not only in economic terms, but also in undermining the spirit of cooperation and the integrity of the international system.

42. Ms. CAMPBELL, discussing the previous contribution, stressed the growing economic interdependence of countries which had to be taken into account when designing MEAs. Within the Montreal Protocol special emphasis has been given to "market forces", and in particular those with trade-related effects.

43. Ms. STEVENS pointed out that the OECD Environmental Policy Committee gave priority to the issue of trade and environment. She indicated three areas where trade restrictions based on processes and production methods (PPMs) were used for environmental protection: domestic, foreign, and shared environments. As regards the domestic environment the restriction of imports by setting of product standards would conform to the GATT/TBT and the SPS Code. In general, PPM-based trade restrictions have not been allowed to protect the foreign environment without spillover effects. However, developing a code of minimum environmental standards at the international level would be a formidable task. PPM-based trade measures should be carefully considered when used to correct market failures in respect of shared environments. The debate should focus on exceptions to the general prohibition of trade restrictions based on PPMs. The following principles should apply while using PPM-based trade measures:

- Their use should be linked to MEAs.
- They should only be considered a last resort.
- PPM-based trade restrictions placed on developing countries should be accompanied by some type of compensation.

44. Mr. SCHOENBAUM, referring to the way GATT/WTO should deal with the issue of PPMs, stressed that the WTO Committee on Trade and Environment could serve as a forum for discussion. It should also encourage bilateral agreements between member states when a particular PPM of the "exporting state" becomes an issue relating to competitiveness and environmental protection. Within WTO MEAs should be admitted as an exception to justify PPMs and trade sanctions. Trade sanctions should not be used in an environmental agreement unless they are regarded necessary to achieve its purpose and meet a "least restrictive" test. WTO should also devote special attention to PPM based taxes which have increasingly been perceived as an issue of importance.

45. In the discussion there was agreement that international environmental instruments should evolve toward making trade and environment mutually supportive and reinforcing. In this context reference was made to the NAFTA Side Agreement on Environment. Contradictory views on the environmental benefits of NAFTA were expressed. It was mentioned that trade measures could be a very useful, but not the sole component for the implementation of MEAs. Some participants shared the view that a distinction has to be made between product standards, which are already covered by GATT, and PPMs, which need considerable further elaboration. The role of NGOs in imposing "unilateral measures" was also raised. The view was expressed that a stronger involvement of NGOs in the decision-making process would result in less pressure of NGOs on governments.

46. Mr. SCHERER illustrated the legal framework EU member states have to take into account when designing national regulations on environmental protection restricting free trade. He stated that according to specific restrictions of EU regulations, different provisions apply depending on the prerequisites that have to be met. Within the EU, trade measures for environmental purposes depend on the necessity of the environmental aim as well as the principles of nondiscrimination and proportionality. EU's supranational mechanisms respresent a fairly coherent regional approach to "trade and environment". These mechanism may serve as a model for international dispute settlement, particularly as regards their combination of overall regulatory principles, detailed substantive rules on specific environmental problems, conflict resolution, and adjudication procedures.

47. Ms. SCHUSTER-MEYER underlined the role of the European Court of Justice in integrating environmental concerns into the European Union. She regarded free trade (trade liberalization) and environmental concerns (internalization of environmental costs) as being of equally crucial importance to resolve the tension between free trade and environmental issues. To be successful in this regard countries would have to give up some elements of sovereignty.

48. In the discussion the subject of sovereignty was again taken up. The view was expressed that time has come for an overall examination of this topic. It should be taken into account that NAFTA and EU states have voluntarily given up some of their sovereign rights.

Conclusions Drawn by the General Rapporteur

49. The view prevailed that international environmental law could and should contribute to the process and objective of sustainable development.

For this purpose international environmental law should also give clear guidance to the making and application of domestic law which within the respective countries translate international commitments into local action.

This environmental legislation should also integrate economic and social aspects.

50. A widely shared opinion was that nonlegally binding agreements ("soft-law") should be considered an important, at least interim, step in the international process of rule-making; the view was expressed that the early adoption of legally binding instruments is not always an optimal solution, especially if such instruments are unlikely to be ratified and adequately applied in all relevant countries.

> The CSD might consider recommending that states and international organizations make more frequent use of nonlegally binding agreements.

51. The concept of "equity" was thoroughly discussed as an instrument to attain "global environmental justice". Questions were raised about this concepts actual and effective application.

There was a broadly shared view that international lawmaking could and should be improved; the quality of each rule has a major impact on compliance with commitments contained in that rule.

Skepticism prevailed on the possibility and utility of bringing convention secretariats together under a formal umbrella-institution covering problems common to the various instruments and the respective secretariats.

52. Many participants agreed with the view that sustainable development is an evolving concept, the contents of which should be reviewed from time to time.

In this context the utility of specific economic, social, and ecological indicators was highlighted; these indicators could help to check the actual application of this concept.

Participants were aware of the interrelationship between the general rules of international law and the specific provisions contained in the respective treaties; a certain amount of interdependence and cross-fertilization could be discovered.

53. No clear consensus emerged as to the utility of legal principles for the advancement of sustainable development, especially in view of uncertainties related to the content and status of these principles.

Some participants held the view that such principles could, through the process of refinement, facilitate the general evolution of international law. Others expressed concern that referring to principles in treaties could create the illusion that such principles had a legally binding effect.

54. There was the broadly shared view that international environmental treaties, in order to ensure their full contribution to sustainable development, should contain machinery and procedures related to implementation and compliance control. Existing reporting and monitoring procedures should be streamlined and harmonized.

Another equally, broadly shared view indicated that compliance control, based on incentives rather than on sanctions, would ensure the full application of the respective agreement.

> The CSD might consider recommending that all international treaty regimes related to sustainable development, which include most environmental treaties, contain compliance-control machinery. If they do not, they should be amended accordingly. The Montreal Protocol and the Protocol on Sulfur emissions could serve as models.

55. Participants were aware that compliance with international commitments iss mainly dependent on the respective national capacities.

The broad view emerged that capacity-building was also an important precondition for sustainable development. Such capacity-building should primarily relate to economic, social, and ecological problems; but it should also improve know-how in the fields of lawmaking, the implementation of domestic laws, and international agreements.

In this context special attention would have to be paid to the needs of developing countries.

> The CSD might consider encouraging states and relevant organizations to become more actively involved in capacity-building, especially by means of the appropriate transfers from North to South; in this context the close linkage between compliance and capacities should be highlighted.

Participants also considered it legitimate that countries lacking appropriate capacities may benefit from exceptions or special regimes provided for them in some treaties.

> The CSD might consider it appropriate to call on countries eligible for such exceptions or special regimes to draw on these possibilities only after having exhausted all other means available to them.

56. A broadly shared view indicated that disputes between states on environmental matters should be avoided before they arise; this would correspond to the objective of preventive action common to all environmental endeavors. Some national initiatives related to new mechanisms for dispute avoidance were referred to.

> The CSD might consider recommending that states give dispute avoidance preference over dispute stettlement and explore ways and means to that end.

57. Views were expressed that some international institutions such as UNEP would act under new mandates as a consequence of the Rio Summit; for UNEP this includes a strengthened role in the field of international environmental law. In this context sustainable development was regarded by some participants as a yardstick for the performance of international environmental agreements.

Some participants held the view that already existing or emerging international funds and trust funds could serve as viable means to support efforts, mainly of developing countries, orientated toward sustainable development. Such funds entrusted to already existing institutions could avoid the creation of new bureaucracies and facilitate crucial financial transfers.

The role of corporate business was highlighted in view of its participation in decision-making at different levels, its contributions to pollution, and its possibilities of promoting technological change and other aspects of sustainable development. In this context attention was also drawn to the rising importance of environmentally sound infrastructures. Participants also stressed the advantages of eco-auditing and expressed concern about "backward leapfrogging", which implies the relocation of industries to environmentally less demanding sites.

On the functions of nongovernmental organizations, a broad debate took place. Whereas, on the one side, expectations were raised as to their right to know or their right to be heard, doubts were expressed, on the other side, as to the qualification, legitimacy, and usefulness of some NGOs. A broad feeling prevailed that additional light should be shed on these questions and that NGOs would have to abide by certain rules and criteria to participate in international lawmaking. The view was also expressed that NGOs could make useful contributions to sustainable development and the rule-making process related to it, especially in view of their linkages to local interests.

The CSD might consider it advisable to contribute to ongoing efforts at the level of ECOSOC aimed at reviewing conditions for the participation of informal actors in international decision-making related to sustainable development.

58. A broad discussion took place on various issues related to trade and environment. In this context risks associated with unilateral measures were highlighted because they may also threaten the cooperation in and the integrity of the international system. Attention was also drawn to so-called PPM-standards, the application of which should - in the view of many participants - only be used in a very restricted way. As regards environmental exceptions to be admitted in the GATT framework, the opinion was expressed that multilateral environmental agreements should be included in such a list. The new WTO Committee on Trade and Environment could play a useful role in this context.

Considering developments at the regional level, attention was drawn to new legislation and related experience within the European Union, where under certain circumstances priority is given to environmental concerns. Possible conflicts between those concerns and the free movement of goods could be settled through the highly developed judicial system available in the EU.

The CSD might consider it advisable to keep itself informed as closely and regularly as possible on the work of the new Committee on Trade and Environment of the WTO.

59. A general impression that prevailed throughout the Symposium was that international law on sustainable development and on particular international environmental law existed in a highly compartmentalized fashion. Although this situation might be unavoidable due to differences between matters still to be addressed, the existence of legal and international problems common to most instruments cannot be denied.

The CSD might consider it advisable to establish an Advisory Body of Legal Experts (ABLE) which

- would consider these legal and institutional problems common to most instruments in the field

- would give advice on possible solutions to these problems in also drawing on inputs from nonlegal sections, and

- would deal with all legal and institutional questions entrusted to it by the CSD.

****

60. In the name of all participants Mr. JOMAA and Ms. WILLIAMS-SILVEIRA expressed their gratitude to the Austrian Government for having organized this symposium and for the hospitality extended to them.

APPENDIX I

Agenda / Programme of Work

Thursday, 14 April

Introduction by Ambassador Prof. Winfried LANG, Permanent Representative of Austria, Geneva

Welcome Addresses by the Federal Minister for Environment Youth and Family, Ms. Maria RAUCH-KALLAT and Ambassador Wolfgang WOLTE, Deputy Secretary General for Foreign Affairs (on behalf of Foreign Minister Alois Mock)

Keynote Statement by Ms. E.DOWDESWELL, Executive Director, UNEP: **Sustainable Development - Possible Contributions of International Law**

Opening Panel: Sustainable Development - Objective and Consequences

CHAIR: Mr. Hugo HAIDER, Deputy Director Geneneral, Federal Ministry for Environment, Youth and Family
RAPPORTEUR: Amb. Prof.Winfried LANG, Permanent Representative of Austria, Geneva
SPEAKERS: Executive Director DOWDESWELL
Mr. Ghazi JOMAA, Vice-Chairman, CSD
Ms. Mary Pat WILLLIAMS-SILVEIRA, DPCSD, New York

Panel 1 Priorities for the Development of International Law

CHAIR: Ambassador Franz CEDE, Legal Counsel, Federal Ministry for Foreign Affairs, Vienna
RAPPORTEUR: Mr. Hugo Maria SCHALLY, Austrian Mission, Geneva

/...

1.1.	**Regional (transboundary) and Global Problems**
SPEAKER:	Prof. Edith BROWN WEISS, Georgetown University Law Center, Washington D.C.
DISCUSSANT:	Prof. Konrad GINTHER, Graz University
1.2.	**General Rules versus Specific Obligations (Climate Change, Biodiversity, Desertification)**
SPEAKER:	Prof. Günther HANDL, Wayne State University Law School, Detroit
DISCUSSANT:	Mr. Michel ZAMMIT-CUTAJAR, Secretariat, INC-Climate Change Mr.A. DIALLO, Secretariat, INC-Desertification
1.3.	**New and Emerging Principles (as contained in Rio Declaration)**
SPEAKER:	Mr. Philippe SANDS, Director, FIELD, King's College, London
DISCUSSANT:	Dr. Howard MANN, Ottawa, Ontario

Friday, 15 April

Panel 2	**Implementation of and Compliance with International Environmental Commitments**
CHAIR:	Prof. Gerhard HAFNER, Vienna University
RAPPORTEUR:	Dr. Meinrad HANDSTANGER, Federal Chancellory, Vienna
2.1.	**Effective Implementation**
SPEAKER:	Dr. Ronald B. MITCHELL, Harvard University, Cambridge MA (on behalf of Prof. Antonia Chayes)
DISCUSSANT:	Mr.M. KOSKENNIEMI, Ministry of Foreign Affairs, Legal Department, Helsinki
2.2.	**Mechanisms of Monitoring and Reporting on Compliance**

SPEAKER: Mr. Patrick SZELL, Legal Directorate, Dept. of the Environment, London
DISCUSSANT: Dr. Ronald B. MITCHELL, Harvard University, Cambridge MA

2.3. **Possible Conflicts, their Prevention and Settlement, Alternative Mechanisms for Dispute Avoidance, such as "UN-Green Helmets"**

SPEAKER: Mr. Andronico ADEDE, Deputy Director for Research and Studies, Codification Division, Office of Legal Affairs, UNO, New York
DISCUSSANT: Dr. Gerhard LOIBL, Vienna University

2.4. **Capacity Building at the Regional and National Levels (law making, institution-building, development of human resources)**

SPEAKER: Ms. Diana PONCE NAVA, UNEP, Nairobi
DISCUSSANT: Mr. Alan BOYLE, Queen Mary and Westfield College, University of London

Panel 3 **Participation of all Stakeholders in the Development and Implementation of International Law for Sustainable Development**

CHAIR: Prof. Christoph SCHREUER, Salzburg University
RAPPORTEUR: Ms. Waltraud PETEK, Federal Ministry for Environment, Youth and Family, Vienna

3.1. **International Institutions**

SPEAKER: Dr. A.TIMOSHENKO, UNEP, Nairobi
DISCUSSANT: Prof. M. A. BEKHECHI, University of Oran, Faculty of Law

3.2. **Role of the International Financial Institutions**

SPEAKER: Dr. Peter SAND, World Bank/Legal Department, Washington D.C.
DISCUSSANT: Mr. George de BERDT ROMILLY, Halifax

/...

3.3. **Role of Corporate Business**

SPEAKER: Prof. Nazli CHOUCRI, Massachusetts Institute of Technology
DISCUSSANT: Dr. Norio YAMAMOTO, Global Infrastructure Fund, Tokyo

3.4. **Role of NGOs**

SPEAKER: Dr. W. BURHENNE, Executive Governor, Internat. Council of Environmental Law, Bonn
DISCUSSANT: Mr. Owen LYNCH, World Ressources Institute, Washington D.C.

Saturday, 16 April

Panel 4 **Environmental Policies - their Compatibility with International Trade and other Agreements**

CHAIR: Mr. Thomas Michael BAIER, Federal Ministry for Foreign Affairs, Vienna
RAPPORTEUR: Ms. Ulrike HLAWATSCH, Federal Ministry for Environment, Youth and Family, Vienna

4.1. **Unilateral Measures versus Multilateral Environmental Agreements**

SPEAKER: Mr.Robert A.REINSTEIN, Exec.Vice President, Washington International Energy Group
DISCUSSANT: Ms.Laura CAMPBELL, Montreal Protocol Secretariat

4.2. **Product Standards versus Processes and Production Methods (PPMs)**

SPEAKER: Ms.Candice STEVENS, OECD
DISCUSSANT: Prof.Thomas SCHOENBAUM, University of Georgia, Athens, GA

4.3. Regional Perspectives on Trade and Environment

SPEAKER: Mr.Joachim SCHERER, Baker & McKenzie, Frankfurt/Main

DISCUSSANT: Ms. Martina SCHUSTER-MEYER, Federal Ministry for Environment, Youth and Family, Vienna

Concluding Statement by Ambassador Prof. Winfried LANG

APPENDIX II

List of Participants

Mr. Andronico ADEDE, Deputy Director for Research and Studies, Codification Division, Office of Legal Affairs, UN, New York,

Mr. Thomas Michael BAIER, Legal Office, Federal Ministry for Foreign Affairs, Vienna

Prof. M.A. BEKHECHI, University of Oran, Faculty of Law, Algeria,

Mr. George de BERDT ROMILLY Environmental and Labour Consultant, Halifax

Mr. Alan BOYLE, Queen Mary and Westfield College, University of London

Prof. Edith BROWN WEISS, Georgetown University Law Center, Washington, D.C.

Dr. Wolfgang E. BURHENNE, Interparlamentarische Arbeitsgemeinschaft, Bonn

Ms. Laura B. CAMPBELL, Deputy Co-ordinator, Ozone Secretariat, UNEP, Nairobi

Ambassador Franz CEDE, Legal Counsel, Federal Ministry for Foreign Affairs, Vienna

Prof. Nazli CHOUCRI, Massachusetts Institute of Technology, Department of Political Science, Cambridge, MA.

Mr. Arba DIALLO, Executive Secretary INC-Desertification, Geneva

Ms. Elizabeth DOWDESWELL, Executive Director, UNEP, Nairobi

Prof. Dr. Konrad GINTHER, Graz University

Prof. Gerhard HAFNER, Vienna University

Mr. Hugo HAIDER, Deputy Director Geneneral, Federal Ministry for Environment, Youth and Family

Prof. Günther HANDL, University of Colorado, Boulder, CO.

Mr. Meinrad HANDSTANGER, Federal Chancellory, Vienna

Ms. Ulrike HLAWATSCH, Federal Ministry for Environment, Family and Youth, Vienna

Mr. Ghazi JOMAA, Vice-Chairman, CSD, Mission of Tunisia, New York

Mr. M. KOSKENNIEMI, Ministry of Foreign Affairs, Legal Department, Helsinki

Ambassador Prof. Winfried LANG, Permanent Representative of Austria, Geneva

Dr. Gerhard LOIBL, Vienna University

Mr. Owen LYNCH, World Resources Institute, Washington D.C.

Dr. Howard MANN, International and Environmental Law and Policy Legal and Consulting Practice, Quebec

Dr. Ronald B. MITCHELL, Harvard University, Center for Science and International Affairs, Cambridge, MA.

Ms. Waltraud PETEK, Federal Ministry for Environment, Family and Youth, Vienna

Ms. Diana PONCE NAVA, Policy Advisor of the Executive Directors, UNEP, Nairobi

Ms. Maria RAUCH-KALLAT, Federal Minister for Environment Youth and Family

Mr. Robert A. REINSTEIN, Executive Vice President, Washington International Energy Group, Washington D.C.

Dr. Peter SAND, Legal Department, World Bank, Washington DC,

Mr. Philippe SANDS, Director, SOAS, University of London

Mr. Hugo Maria SCHALLY, Austrian Mission, Geneva

Hr. Joachim SCHERER, Baker & McKenzie, Frankfurt/Main

Prof. Thomas J. SCHOENBAUM, Executive Director, School of Law University of Georgia, Athens, Georgia

Mr. Heinz SCHREIBER, Director General, Federal Ministry for Environment, Youth and Family, Vienna

Prof. Christoph SCHREUER, Salzburg University

Dr. Martina SCHUSTER-MEYER, Federal Ministry for Environment, Family and Youth, Vienna

Ms. Candice STEVENS, OECD, Paris

Mr. Patrick SZELL, Legal Directorate, Dept. of the Environment, London

Dr. A. TIMOSHENKO, Chief, International Legal Instruments, UNEP, Nairobi

Ms. Mary Pat WILLIAMS SILVEIRA, UN/DPCSD, New York

Ambassador Wolfgang WOLTE, Deputy Secretary General for Foreign Affairs

Dr. Norio YAMAMOTO, Managing Director, Global Infrastructure Fund, Tokyo

Mr. Michael ZAMMIT CUTAJAR, UN-Climate Change Secretariat, Geneva

Secretary: Ms. Barbara NOVOTNY, Federal Ministry of Foreign Affairs, Vienna

---